

## Michigan Hot Issues

January 5, 2018

### **EPA Coordinating with Michigan on Wolverine Enforcement Approach (Pulled from Weekly Report Dec 21, 2017)**

Key Message: On December 21, 2017, EPA and the state of Michigan presented to Wolverine World Wide, Inc. (WWW) a proposed approach to investigation, sampling, analysis, and provision of alternate water at the Wolverine sites.

The coordinated approach includes the negotiation of two separate orders with EPA and Michigan by mid-January 2018: a) an administrative order on consent between WWW and Michigan under state Part 201 and Part 31 authorities that addresses PFAS and provision of alternate water, and b) an administrative order on consent between WWW and EPA under CERCLA Section 106 authorities for investigation, sampling, and analysis at the Tannery and House Street landfill. EPA's deadline for WWW to give an indication of interest in negotiations is close of business December 21. Region 5 plans to sample groundwater and drinking water for PFAS at several locations in Rockford, Michigan the week of December 25, 2017, including at the former Tannery, the House Street landfill, and at residences with filters installed.

Since 2012, MDEQ has had the lead in addressing arsenic and chromium contamination at Wolverine's former Tannery under a state "other cleanup authority (OCA)" alternative. PFAS contamination at the site came to light earlier in 2017. Since then, WWW has identified numerous residential wells impacted by PFAS at concentrations above EPA's lifetime health advisory of 70 parts per trillion – presumably from waste generated by WWW's operations using Scotchgard™, which contained PFAS compounds. WWW potentially used as many as 95 disposal locations for its wastes. Since late summer 2017, WWW has been voluntarily providing alternate drinking water or installing whole-house water filters to some of the impacted residents with PFAS-contaminated drinking water, but EPA has concerns about filter efficacy and the sampling method used to analyze PFAS drinking water samples.

On October 20, 2017, citizens living near the WWW facilities submitted a revised citizen suit notice under RCRA Section 7002(a)(1)(B) (imminent hazard). EPA issued a follow-up CERCLA Section 104(e) information request to WWW on December 1, 2017, to better understand its factory operations, waste handling and disposal operations, and the procedures that are being used to test residents' drinking water and remediate higher concentrations of PFAS. The contamination has been reported on in national and local media and has been of great concern to the local community.

### **EPA Requests Michigan and Flint to Expedite the Use of Federal WIIN Funds (Pulled from Weekly Report Dec. 17, 2017)**

Key Message: On December 7, 2017, Region 5 sent a letter to the city of Flint and Michigan Department of Environmental Quality (MDEQ) regarding the city of Flint's expenditures of the \$100 million that EPA conditionally awarded MDEQ on March 17, 2017, under the Water Infrastructure Improvements for the Nation Act (WIIN).

As of mid-November, it appears that only **\$192,972** in federal WIIN funds (and roughly \$11 million in state funds) have been paid out for projects thus far. Based on these expenditures of the federal WIIN funds to date, EPA requests that MDEQ and the city make efforts to expedite the planning and implementation of critically needed infrastructure improvement projects.

In addition to the \$100 million of federal WIIN funding, the state contributed a \$20 million state match. The conditional award approved \$51.5 million for three projects: lead service line replacement (\$40 million), water main replacement (\$10 million), and a corrosion control study and asset management

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plan (\$1.5 million). While the lead service line replacement project, and the corrosion control study and asset management plan are proceeding, the water main project has not begun. Also, plans for the remaining \$68.5 million have not been finalized.

### **County Road 595 Oral Arguments Held Before U.S. Court of Appeals (Pulled from Weekly Report Dec. 7, 2017)**

Key Message: On December 6, 2017, oral arguments were held before a three-judge panel of the 6th Circuit U.S. Court of Appeals in Cincinnati in the matter of *Marquette County Road Commission v U.S. EPA*.

The primary issue in the appeal is whether EPA's objection to a Clean Water Act Section 404 wetlands dredge and fill permit proposed by the Michigan Department of Environmental Quality constitutes final agency action subject to judicial review under the Administrative Procedure Act. In 2011, the Road Commission applied to MDEQ for a wetlands fill permit in order to construct a 22-mile ore haul road (County Road 595) in the Upper Peninsula of Michigan. In its oversight capacity, EPA objected to the proposed permit on grounds that it did not comply with the CWA and its implementing regulations [the Section 404 (b)(1) Guidelines].

After MDEQ was unable to resolve the objection within the statutory timeframe, permitting authority passed by operation of law to the U.S. Army Corps of Engineers. Rather than pursuing the permit application with the Corps, some two and a half years later the Road Commission filed suit in federal district court against EPA and the Corps, alleging that EPA's objection constituted a "veto" of the permit that was immediately reviewable in federal court and that the Corps should have processed the permit application even though the Road Commission never asked it to do so. The district court granted the government's motion to dismiss and denied the Road Commission's motion for reconsideration, ruling that EPA's objection was merely an intermediate step in the permitting process, rather than a final decision on the permit application, and that the Corps had no duty to act on the permit application without some request by the Road Commission. The Court of Appeals has taken the matter under advisement.

### **State of Michigan and Enbridge Energy LP Enter Agreement Regarding Line 5 in the Straits of Mackinac Pulled from Weekly Report Nov. 30, 2017)**

Key Message: On November 27, 2017, the State of Michigan entered into an agreement with Enbridge to establish additional measures and undertake further studies concerning Enbridge's stewardship of Line 5 within Michigan and the transparency of its operation.

The November 27, 2017, agreement with Enbridge requires the following: (1) increased coordination between Michigan and Enbridge; (2) the replacement of the Line 5 St. Clair River Crossing; (3) discontinuation of Line 5 operations during sustained adverse weather conditions in the Straits of Mackinac; (4) an evaluation of technologies to detect leaks and damage to the coating on the Dual Pipelines in the Straits of Mackinac; (5) an evaluation and implementation of measures to mitigate anchor strikes in the Straits; (6) an evaluation of alternatives to replace the Dual Pipelines that cross the Straits (including the use of a tunnel); and (7) an evaluation of Line 5 water crossings other than the Straits to minimize risks of a release. After the completion of the required evaluations, the agreement provides that the parties will initiate discussions regarding further agreement on Enbridge's operations in the Straits of Mackinac. The agreement has received national press coverage.

In May 2017, a Consent Decree was entered between EPA and Enbridge to resolve violations from the

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2010 Kalamazoo River oil spill in Marshall, Michigan. The CD includes substantial injunctive relief concerning Line 5 in the Straits of Mackinac. Based on an initial analysis, it does not appear that the state agreement will immediately impact Enbridge's commitments under the federal CD. If, however, the state agreement ultimately leads to another agreement that provides for the replacement of the Dual Pipelines, several requirements of the federal CD would likely be impacted.

### **EPA Participated in Representative Dingell's Gelman Facility Public Meeting (Pulled from Weekly Report Nov. 16, 2017)**

Key Message: The November 13, 2017 meeting, held in Scio Township, Michigan, was to improve communication between the Michigan Department of Environmental Quality (MDEQ) and the local community regarding the Gelman 1,4-dioxane groundwater release, and to hear local community concerns.

The Gelman site is a state lead groundwater contamination site in Michigan. Some stakeholders have requested that EPA take back lead and list the site. At the meeting, EPA discussed the results of a recently-completed Superfund Preliminary Assessment (PA), the rationale for referring the Gelman release back to MDEQ for its continued management, and EPA's continued role at the site. Stakeholders and local elected representatives expressed disappointment that EPA was not pursuing listing the site on the National Priorities List nor taking over management of the groundwater remediation effort. EPA explained that MDEQ will continue to address the release with on-going involvement of an EPA Remedial Project Manager. EPA asked community members to identify exposure concerns that should be tracked and answered through MDEQ's reports to EPA, which will be shared with the public. EPA is working with MDEQ on the format of the reports and expects the first one to be submitted in early 2018. Approximately 40 people attended the meeting.

In letters dated November 7, 2017, EPA provided the PA results to the MDEQ and the parties that submitted the PA petition to EPA – Scio Township, Ann Arbor Township, and Sierra Club-Huron Valley Group. The letters stated that although the Gelman release qualifies for further evaluation under the Superfund program, EPA decided to designate the Gelman release as "Other Cleanup Authority – State Lead." The letters described quarterly and semi-annual reporting that MDEQ agreed to submit to EPA; and further explained that EPA reserves the option to pursue enforcement actions at the Gelman facility in the future, and does not waive CERCLA authority.

### **Allied Paper/Kalamazoo River Cleanup (Pulled from EPA Website)**

The Allied Paper Inc./Portage Creek/Kalamazoo River Superfund Site is located in Allegan and Kalamazoo Counties, Michigan. The site includes soil and sediments contaminated by a group of chemicals called *polybrominated biphenols* (PCBs) in 80 miles of the Kalamazoo River (from Morrow Dam to Lake Michigan), paper mill properties, riverbanks and floodplains, and a 3-mile stretch of Portage Creek. EPA has broken down the site into six segments, or *operable units* (OUs), that require cleanup. The six OUs are as follows:

- **OU 1:** Allied Paper Property/Bryant Mill Pond Area;
- **OU 2:** Willow Boulevard and A-Site Landfill;
- **OU 3:** King Highway Landfill;
- **OU 4:** 12th Street Landfill;
- **OU 5:** Portage Creek and Kalamazoo River sediments; and

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- **OU 7:** Plainwell Mill

Five of the OUs are considered *source OUs*, meaning they historically contributed to (i.e., were *sources* of), the river's contamination. So far, cleanup has taken place at three of the five source OUs and EPA conducts maintenance activities and monitors underground water sources, or *groundwater*, at these locations. For the remaining OUs that were a source of contamination to the river, interim actions have been taken to stop contamination to the river and cleanup decisions have occurred to address what remains.

OU5 includes 80 miles of the Kalamazoo River and 3 miles of Portage Creek. Because OU5 is so large and complex, it has been divided into seven Areas. Each Area is separated by dams and requires its own cleanup. EPA has decided on cleanup plans for two of the seven Areas in addition to taking interim actions throughout Kalamazoo River and Portage Creek to protect human health and the environment.